

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

ADAM FRIED,)	Case No. 1:22-cv-0061
)	
Plaintiff,)	
)	
v.)	JUDGE DAN AARON POLSTER
)	
JOSE GARCIA,)	
)	<u>ORDER</u>
Defendant.)	
)	

Currently pending before the Court is Defendant Jose Garcia's motion for summary judgment. [ECF Doc. 44](#). One of the issues the parties have moved the Court to decide is whether Defendant Garcia was acting under color of law when he shot and killed Desmond Franklin as this is an essential element of the § 1983 claim. *See* [ECF Doc. 44 at 8](#). Plaintiff contends that Defendant Garcia *was* acting under color of state law. *See* [ECF Doc. 47 at 14](#).

Defendant Garcia's motion and reply ([ECF Doc. 48](#)) recite facts supporting both sides of the issue but do not actually take a position on whether Garcia was acting under color of law. Nonetheless, Defendant requests that the Court decide, as a matter of law, whether Garcia was acting under color of law. But the Court is prevented from rendering advisory opinions on hypothetical or abstract questions. *Hall v. Beals*, 396 U.S. 45, 48, 24 L. Ed. 2d 214, 90 S. Ct. 200 (1969); *see also* *U.S. Nat. Bank of Oregon v. Independent Ins. Agents of America, Inc.*, 508 U.S. 439, 446, 124 L. Ed 2d 402, 113 S. Ct. 2173 (1993); *McCurry ex rel. Turner v. Adventist Health System/Sunbelt, Inc.*, 298 F.3d 586, 597 (6th Cir. 2002); *North Am. Natural Resources, Inc. v.*

Strand, 252 F.3d 808, 812 (6th Cir. 2001) (explaining that “one of the fundamental axioms of American jurisprudence is that a federal court may consider only actual cases or controversies.”) If the parties agree that the undisputed facts are that Garcia was acting under color of law when he shot Franklin, that is an issue the Court need not decide. Conversely, if Defendants contend that Garcia was acting as a private citizen, the Court must decide this issue as a matter of law.

On or before 12:00 p.m., noon, on March 22, 2024, Defendants must file a brief which either accepts Plaintiff’s position that Defendant Garcia was acting under color of law when he shot Desmond Franklin, or which cogently lays out the facts and law explaining why Garcia was acting as a private citizen. Should Defendant contend that Garcia was acting as a private citizen, the Court will permit Plaintiff to file a response on or before 12:00 p.m., noon on March 29, 2024.

IT IS SO ORDERED.

Dated: March 15, 2024

s/Dan Aaron Polster

United States District Judge